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Is British Columbia Leading the Way in Natural Resources Management?

Part I: The Commission on Resources and Environment

*by Steven A. Kennett**

Introduction

Resource use conflicts in British Columbia have attracted national attention in recent years. A series of bitter disputes have centred on the logging of old growth forests in areas such as Meares Island, Lyell Island and the South Moresby archipelago, and the Carmanah, Walbran and Stein valleys. Mineral extraction has also been the subject of controversy, most recently with the proposed Windy Craggy mine in the Tatshenshini-Alsek region.

The importance of the natural resources sector for British Columbia's economy, a tradition of political polarization, and the province's spectacular and diverse scenery and ecosystems explain why this province has led the way in Canada in generating high profile resource use conflicts. There is increasing evidence, evidence, however, that British Columbia may also be leading the way in devising innovative means of resolving

Résumé

Cet article est le premier d'une série de trois traitant des initiatives importantes concernant la gestion des ressources naturelles de la Colombie-Britannique. Le sujet de cet article est la Commission on Resources and Environment (CORE). La Forest Resources Commission et la Resources Compensation Commission seront traitées ultérieurement.

La CORE a été créée en janvier 1992 pour répondre aux conflits actuels concernant l'utilisation des ressources en Colombie-Britannique, principalement les industries forestière et minière. Cet article rappelle l'objectif et le mandat de la CORE et fait état des trois éléments de sa stratégie proposée pour l'utilisation du sol. Ces éléments sont: (1) déclarations de principes générales, catégories d'utilisation du sol et droits et responsabilités du citoyen quant à sa participation; (2) procédés d'affectation du sol à l'échelle régionale; et (3) procédés de planification, de gestion et de surveillance par les collectivités. En se concentrant surtout sur des décisions prises à partir de négociations, nous terminons cet article en énumérant quatre domaines qui suscitent des inquiétudes quant à la stratégie de la CORE.

Inside

these disputes and moving towards the objective of sustainable development in resources management. This article is the first in a series examining three important resources management initiatives in British Columbia. The focus here is on the Commission on Resources and Environment (CORE). CORE has overall responsibility for developing a provincial land use strategy and reforming the processes for resources and environmental decision-making in British Columbia. The second article in this series will discuss the Forest Resources Commission. This commission examined the state of the province's forest land base and made recommendations for improved forest management. In the third article, the work of the Resources Compensation Commission will be reviewed. It has conducted an inquiry into principles and processes for determining compensation when private mineral or timber interests are "taken" by the government and the resource redirected to public use. Together, these commissions constitute the basis for a fundamental rethinking of natural resources allocation and management in British Columbia.[1]

CORE's Purpose

CORE was established in January, 1992 with Stephen Owen, the respected former Ombudsman of British Columbia, as Commissioner. In announcing the Commission, Premier Michael Harcourt stated that the government was "taking a new approach to land use planning and decision-making — one we believe will help put an end to valley-by-valley conflicts."[2] Commissioner Owen, in an open letter released in March, 1992, stated that:

> Over the next two years, CORE will be developing and supporting the implementation of a provincial resource strategy and regional and local processes for making resource management decisions. The objectives are to sustain our economy, our environment and our communities; to inform and involve the public; and to replace confrontation with consensus in making resource management decisions.[3]

He also stated that CORE's role was not to resolve directly a multitude of local resource disputes, but rather "to design new processes for the future."[4]

Logging disputes on Vancouver Island were identified as a top priority for CORE, and the government deferred logging in contentious areas for 18 months to permit the Commission to carry out its regional land use planning process.[5] The Commission's attention was also directed to contentious areas in the Kootenays and the Cariboo Mountains.[6] Subsequently, it was handed the Tatshenshini-Alsek land use issue, and a mineral claim-staking reserve was placed over the region to preserve the Commission's options.[7]

CORE's Mandate

CORE's statutory mandate, defined in the *Commissioner on Resources and Environment Act*, contains three elements (ss.4(1)-(3)):

- to develop a province-wide strategy for land use and related resource and environmental management;
- to facilitate the development, implementation and monitoring of regional planning processes, community based participatory processes and a dispute resolution system for land use and related resource and environmental issues; and
- to ensure effective and integrated resource and environmental management through the coordination of government initiatives (e.g., the Protected Area Strategy and the Round Table on the Environment and the Economy) and the encouragement of Aboriginal participation.

In addition, the Commissioner is to advise the government on resources management and issue public reports when appropriate (s.3). The statute states that the Commissioner's work and Aboriginal participation therein are without prejudice to Aboriginal rights and treaty negotiations (s.4(4)). The Commissioner is also instructed to give due consideration to economic, environmental and societal interests, to local, provincial and federal responsibilities, and to the interests of Aboriginal peoples (s.4(5)).

CORE's Objectives and the Land Use Strategy

CORE's basic objectives are to develop a provincial strategy for land use and associated resource and environmental

issues and to alter fundamentally the way that resource management decisions are taken in British Columbia. A review of CORE's *Report on a Land Use Strategy for British Columbia*, released in August 1992, suggests that CORE's most important contribution will concern decision-making processes.

The *Report* proposes three elements for a provincial land use strategy (p.12):

- a general statement of principles and goals, the identification of land use categories, and a statement of citizen rights and responsibilities regarding participation in decision-making processes;
- regional planning processes to establish broad land allocations among uses; and
- more detailed resource and environmental planning, management and monitoring processes at the community level.

On the first element, the Commission presents a draft *Land Use Charter*, setting out general (some might say motherhood) principles regarding environmental, economic and social sustainability, decision-making processes, Aboriginal peoples, and shared responsibility for achieving a sustainable society. Intended to guide specific policies and resource management processes, the Commission candidly admits that "these principles are high level statements of social values which may well conflict with one another and need to be reconciled in their practical application" (p.18). The Commission suggests that this reconciliation be achieved through "shared decision-making processes" (p.18).

The second element involves regional negotiation processes to allocate land among competing uses. Participants will include "regional representatives of all significantly and directly affected interests, including provincial government agencies, community governments, Aboriginal peoples and major sectoral interests" (p.19). The resulting allocative decisions are intended to conform with "provincial principles, goals and policies" and also draw upon community-based processes (p.19). Independent mediators will assist in the negotiations, but the process itself is to be determined by the parties. The Commission's role is to assist in structuring the process, to contribute to defining regional boundaries, to provide unbiased information and to report to the public and Cabinet on the outcome. Significantly, the CORE *Report* states that parties will agree to take part on the understanding that "consensus recommendations delivered from regional negotiation processes that conform to the provincial strategy will be adopted by Cabinet" (p.21).

The third element, community-based processes, receives relatively cursory treatment in the *Report*. These processes are intended to generate detailed resource management decisions, "consistent with both the regional land use allocations and emerging provincial principles and policies" (p.23).

Both regional and community-based processes are designed to respond to public alienation from decision-making and the demand for more meaningful involvement (p.25). CORE hopes that shared or consensus decision-making will transform what have frequently been viewed as zero-sum resource use conflicts into "win-win" negotiations. The Commission states that:

> Shared decision-making means that on a certain set of issues, for a defined period of time, those with authority to make a decision and those who will be affected by that decision are empowered to jointly seek an outcome that accommodates rather than compromises the interests of all concerned. Decision-making shifts to a negotiating team and when consensus is reached, it is expected that the decisions will be implemented (p.25).

The Commission's view is that a decision-making process which "provides the participants with an opportunity to design their own solution to a joint problem" will facilitate the resolution of difficult resource use conflicts (p.30).

Issues for CORE

The Commission is undoubtedly correct in asserting that "this approach signals a significant departure from the way in which we have traditionally made land use and resource planning decisions in British Columbia" (p.25). The question is, will this new approach work? While it is premature to attempt to answer this question, four areas of concern can be identified.

The first involves access to the negotiations. The success and legitimacy of the process depends on having the right parties at the table, but identifying these parties may not be easy. For example, will the focus on regional and community-based processes prevent province-wide organizations, or residents of Greater Vancouver, from participating directly in resource management decisions? Could a national coalition, such as that formed to protect South Moresby, participate in the CORE process? Resource management decisions may well involve areas having economic or ecological significance for the province (or country) as a whole. Will the obligation to comply with provincial guidelines, and the participation of government agencies in the negotiations, protect the legitimate interests of those outside the region or community directly affected when decisions of this kind are made?

A second and related issue is how the myriad of stakeholders, whether defined by community residence, economic interest or group membership, will select negotiators and ensure their accountability? The *Report* states that those with decision-making authority, those directly affected by the decision and those who could delay or block the decision should be represented and it also notes that coalitions must be formed to keep the negotiation process manageable (p.30). Achieving these objectives in practice could pose significant problems.

Third, it remains to be seen whether cooperative decision-making corrects or increases imbalances in political and economic power between stakeholders. Will established interests and cohesive groups obtain decisive advantage, to the detriment of the "public interest"? Can the Commission's information-providing and funding roles compensate for financial and other advantages which certain parties will bring to the table?

Finally, the ultimate test of CORE will be whether provincial guidelines, regional land allocation and community-based management can be melded together into a relatively efficient, rapid and legitimate decision-making process which will generate consensus and eliminate some of the uncertainty that has been such a drain on both the resources sector and environmentalists.

Conclusion

The challenge facing CORE is nothing less than the establishment of a framework for achieving sustainable development in British Columbia's resources sector. Whether or not the Commission succeeds in its mission of developing and helping to implement "a world-leading strategy for land use planning and management, as a part of a larger commitment to sustainability" (p.3), it constitutes a brave experiment from which important lessons will certainly emerge.

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Notes

1. Other private and public sector initiatives are also under way. These include the Protected Area Strategy (Parks and Wilderness for the 90's and Old Growth Strategy), the Round Table on the Environment and the Economy, and the Dunsmuir II Group.

2. Premier's Office, Press Release (Harcourt Unveils Comprehensive Land Use Initiative), January 21, 1992, p.1.

3. Open Letter from Stephen Owen, Commissioner of CORE, March 11, 1992, p.1.

4. *Id.*, p.1.

5. Ministry of Forests and Ministry of Environment, Lands and Parks, News Release (Interim Timber Harvesting Strategy Announced), January 21, 1992.

6. Press Release, *supra*, note 2, p.4.

7. Province of British Columbia, News Release (C.O.R.E. to Examine Tatshenshini-Alsek Land Use Issue), July 20, 1992.

Readership Survey

Enclosed with this issue of *Resources* is a readership survey that we ask you to complete and return to the Institute. If, at any time, you have any comments or suggestions with regard to *Resources*, please write to the Institute at Room 430 BioSciences Building, The University of Calgary, Calgary, Alberta, T2N 1N4 or fax us at (403) 282-6182.

The Yukon's Environment Act

*by P.S. Elder**

Many jurisdictions have realized the need to improve their fragmented and incoherent environmental regimes,[1] but the Yukon Territory's recently enacted *Environment Act*[2] (YEA) is one of the most interesting responses in Canada. The following is a brief analysis of this Act, building upon comments made in "One More Look at the Oldman Dam" in the last issue of *Resources*. There, *inter alia*, it was suggested that environmental assessment (EA) will not succeed until it is much more strongly linked to the approval process and is combined with proactive, integrated environmental planning.

Throughout the following discussion, it is important to remember that the Yukon is not yet a province and that its powers are limited to those granted by federal legislation, especially the *Yukon Act*.[3] Various federal acts do many of the things that would be within provincial jurisdiction elsewhere in Canada.[4] Because most if not all settlements are located on land under Yukon jurisdiction, however, the usual "local" matters there can be regulated by the Territory. Close cooperation between the federal and territorial governments is more necessary, and apparently easier, than between federal and provincial governments.

It is also important to realize that various parts of the new statute will be proclaimed, as regulations are prepared, between now and 1996. Thus, there will be a transition period before all of the arrangements described below are operational.

The YEA is a comprehensive statute which attempts to do several things. As might be expected, separate parts are devoted to subjects like solid waste management, reduction and recycling, release of contaminants and spills. More to the point for integrated and comprehensive resource management, however, are the following seven elements of the Act.

First, s.5 of the Act states a number of relevant objectives: preserving biological diversity, promoting sustainable development and ensuring comprehensive, integrated consideration of environmental and socio-economic effects in policy-making. It then sets out a series of principles, including the responsibility of all persons for the environmental consequences of their actions and the responsibility of the government for the wise management of the environment. The government is also instructed to ensure "that public policy reflects its responsibility for the protection of the global ecosystem" (s.5(2)(c)). The section concludes by directing that the Act be "interpreted and applied to give effect to the objectives and principles" (s.5(3)). This approach might well be emulated for other important legislation.

Résumé

La nouvelle *Loi sur l'environnement* du Yukon emploie des moyens innovateurs pour intégrer la planification environnementale et le développement. Ce commentaire, après avoir noté le caractère unique de la situation du Yukon, présente un résumé de sept éléments intéressants de cette loi. L'auteur recommande l'adoption de techniques semblables aux juridictions qui envisagent d'intégrer une gestion compréhensive des ressources, le développement durable et la préservation de l'environnement. Certaines améliorations sont aussi suggérées.

Second, the Act (s.39) directs members of the Executive Council to integrate environmental considerations into all government decisions and to report publicly on the environmental or sustainability effects of any decision with significant implications. Regular audits of the government's environmental performance are required and the Environment Minister must publish a report on the state of the environment every three years (s.48). One of the purposes of this report is "to provide baseline information for environmental planning, assessment and regulation" (ss.47(2)(c) and 48(2)(a)) and its preparation is to be coordinated with various other reports.

Third, integrated environmental planning and management is to be promoted through a revision

of the existing Yukon Conservation Strategy[5] by relevant ministers. The Strategy is to "provide a comprehensive long-term guide for the environmental policies and practices of the Government" (s.44(a)). The government's performance in implementing it is to be reviewed annually by the Council on the Economy and the Environment. This body was created by the Act to encourage sustainable development by various means, and includes interest group representation.

Fourth, Part 5 of the Act, "Integrated Resource Planning and Management", creates an interlocking series of resource management plans (for water, forests, wilderness or land use). Criteria are provided to guide the decision to prepare these plans,[6] and the Conservation and Economic Strategies of the Yukon, and related plans, are to be taken into consideration when resource management plans are being prepared (s.67(2)). The plans are linked to management and approval decisions through the duty to take them into consideration in any procedures under the Act (s.66(3)) and, more strongly, the duty to make permits consistent with the plans, wherever possible (s.68).

The plans' specific contents are dependent on forthcoming regulations, but the Act requires a plan to state the issues to be addressed, the objectives to be achieved, the methods to be used to implement the policies and the anticipated environmental impacts (s.67(1)). Thus, it will be noticed, the ambit of EA has been widened beyond the traditional "project" to include plans. Moreover, Cabinet is obliged by s.39 to identify and consider the environmental implications of any decisions, whether they relate to policies, plans, finances or projects. The breadth of this obligation is welcome to supporters of the Brundtland Commission's approach to environmental quality and sustainable development.[7] Plans prepared under the YEA are also subject to public review. More will be said about EA shortly.

After the preparation of a wilderness management plan (containing, for example, land use designation, a management policy and an environmental impact statement), wilderness management areas may be established (s.74). Regulations on selection and management standards must be promulgated (s.74(4)). Wilderness is recognized as having intrinsic ecological value (s.73). This power to designate land use in a wilderness plan is another step toward creating the proactive, binding, ecological planning framework necessary for effective, project-specific EA.

Fifth, the "development assessment process" provides for close integration of EA with the permit stage, although EA coverage is limited in the YEA to major developments as prescribed by regulation (s.81). Such developments must be screened or reviewed by "an existing assessment or approval process" or one replacing it under an enactment (s.93). The references here are to the federal Environmental Assessment and Review Process (EARP) and the *Canadian Environmental Assessment Act*.[8] The detailed requirements for EA, however, will be handled by a separate Yukon statute, the *Development Assessment Process Act* (DAP), which will be introduced after the finalization of band-by-band final land settlement agreements. DAP is intended to create by 1995 a common, consistent EA process for proposals affecting federal and Yukon lands, as well as to fulfill similar obligations under the *Land Claims Umbrella Final Agreement*.[9] It will parallel the new federal legislation.[10]

To conclude this brief reference to the permitting process, it should be noted that, both now and in the future, permits are meant to cover more than major developments. If a permit is needed, a description of the "proposed development or activity" and "of any effect on the environment" must be provided, as well as means of mitigating adverse effects and a justification for any release of contaminants (s.84). In assessing the permit application, the Minister may require such studies as deemed necessary and may also provide for public consultation (s.86). Close integration of environmental and other factors is obviously intended in the permitting process.

The previous paragraphs describe how the approval process is apparently intended to work. There are, however, two major complications.

First, many permits in the Yukon are issued under existing federal statutes. Therefore, the YEA will not apply to these types of permit until devolution of legislative

power, as opposed to the responsibility to administer these federal acts, occurs. At present, this leaves rather limited jurisdiction over permits for the new Act. Permits could be required, however, for such activities as the storage of hazardous wastes or the establishment of solid waste disposal sites, arguably throughout the Yukon, but certainly where non-federal lands are involved.

Second (perhaps consequent upon the first point), I can find nothing in the *Environment Act* specifically identifying any class of activities for which permits have to be obtained. Part 6 of the Act clearly contemplates an "application for a permit under this part" (s.84(1)) but nowhere in the part is it specifically stated that certain developments or activities cannot be commenced without such permit. Section 83 forbids construction, operation or abandonment of a development without the appropriate permit "where a development or activity requires a permit", but this could not be sufficient authority to require it. Perhaps the power in s.142 for the Commissioner in Executive Council to make extensive regulations "respecting a category or class of development that is subject to ... permit requirements" and

> prescribing the form and content of permit applications, the standards and procedures governing the issuance of permits, and the terms and conditions which may be attached to such permits,

or respecting any matter considered necessary to bring Part 6 into effect, is thought to fill this lacuna. It will be interesting to see what the courts do if someone claims that there are no "permit requirements" provided for in the Act to trigger the s.142 regulation power.

It will be recalled, however, that the Supreme Court in the Oldman dam case[11] ignored the adjective "natural" in front of "environment" in s.4(1)(a) of the *Department of the Environment Act*[12] when it held that "environmental quality" in s.6, which is parasitic upon s.4, authorized the EARP *Guidelines Order*[13] to require socio-economic assessment. We may therefore assume that the courts are prepared to overcome technical interpretive problems if they think the public interest requires it.

The sixth important element of the YEA is its clear recognition that "the global ecosystem is an indivisible whole" (Preamble). Accordingly, provision is made for partnerships with First Nation people, private sector and non-governmental organizations and other governments for joint research, information, EA or action programs (ss.52-56 and 75).

Finally, to "backstop" the planning and management framework described above, the YEA creates an "environmental bill of rights". Section 38 makes the Government of the Yukon the trustee of a public trust to conserve the natural environment. The Act gives adult and corporate residents the right to sue persons likely to impair the natural environment or the Government of the Yukon for failing to meet its responsibilities, as trustee of the public trust, to conserve the natural environment.[14] If none of the defences (activity complying with permit, or unlikely to cause material impairment, or without a feasible and prudent alternative, or causing no impairment outside the property of a consenting user [s.9(1)]) is applicable, the Supreme Court may grant any remedy which it considers just, including requiring the defendant to restore any part of the natural environment and to give financial assurances of performance, cancelling a permit, or ordering the responsible Minister to perform an EA of a development (s.12). To bolster these environmental rights, the Act also provides access to information (s.21), protection for employees against retaliation for "turning in" their employer (s.20), and the rights to conduct private prosecutions with the possibility of receiving the proceeds of any fine (s.19) and to request the Minister to conduct an investigation (s.14). These innovations provide considerable scope for court-based public participation in environmental management.

The Yukon's *Environment Act* provides an example of the direction in which enlightened environmental policy and law appear to be moving. It instructs officials to apply the Act, and the courts to interpret it so as to achieve the explicit goals of sustainable development and integrated environmental and resource management. It provides a robust planning framework within which policy and implementation decisions are to proceed, and it provides for the collection of environmental baseline information. It also involves the public, in various

ways, in plan- and regulation-making as well as in approval decisions. Increased rights to initiate both civil and criminal actions, coupled with explicit statutory duties upon ministers and bureaucrats and the enactment of the public trust, imply much closer public supervision of hitherto discretionary decision-making. Other jurisdictions which are committed to higher standards of environmental quality could profitably study this Act's provisions.

Although the YEA is in many respects a model piece of legislation, various improvements can nevertheless be suggested. Devolution toward provincial status will, eventually, help solve the undesirable limitations on the Act's jurisdiction over permits. Amendment is needed to correct the apparent failure to specify what kinds of development or activities require permits. Making EA parasitic upon existing or newly enacted federal EA processes will expose the Yukon to numerous shortcomings which should have been avoided. These shortcomings include narrow coverage, a failure to address cumulative impacts adequately, insufficient examination of alternatives and, perhaps most of all, the absence of a provision stating that significant, adverse environmental impacts should almost automatically result in rejection of a proposed development or activity. Perhaps the latter will be taken care of, should approvals be given in these circumstances, by successful lawsuits against the Yukon government for failing to meet its responsibilities under the public trust to conserve the natural environment.

** P.S. Elder is Associate Dean and Professor of Law, Faculty of Environmental Design, The University of Calgary.* *Thanks are due to Messrs. Joe Ballantyne and Stephan Fuller, Department of Renewable Resources, Government of the Yukon.*

NOTES

1. E.g., New Zealand's new Resource Management Act (see *Resources* 34 at 3 (Spring 1991)), Alberta's proposed Environmental Protection and Enhancement Act, Bill 23, introduced into the Legislative Assembly's Spring, 1992 Session and the combination of the *Canadian Environmental Protection Act*, S.C 1988, c.22 and the *Environmental Assessment Act*, Bill C-13, passed by the House of Commons on March 29, 1992.

2. Yukon Stats, 1991, c.5, assented to May 29, 1991, but not yet in force.

3. R.S.C. 1985, c.Y-2.

4. For example, the *Northern Inland Waters Act*, R.S.C. 1985, c.N-25; the *Fisheries Act*, R.S.C. 1985, c.F-14; the *Canadian Petroleum Resources Act*, R.S.C. 1985 (2nd Supp.), c.36; the *Oil and Gas Production and Conservation Act*, R.S.C. 1985, c.O-7; the *Yukon Placer Mining Act*, R.S.C. 1985, c.Y-3; the *Yukon Quartz Mining Act*, R.S.C. 1985, c.Y-4; and the *Territorial Land Use Regulations*, C.R.C. Vol. XVIII, c.1524, p.13645 (as am.) promulgated under the *Territorial Lands Act*, R.S.C. 1985, c.T-7.

5. *Yukon Conservation Strategy For Our Common Future* (Whitehorse: Yukon Department of Renewable Resources, 1990).

6. E.g., when significant conflict is likely "between the use, development or protection of natural resources", any foreseeable demand for natural resources, significant concerns of First Nations for their cultural heritage and "any use of land that has ... potential adverse effects on soil conservation or related water quality" (s.66(2)).

7. The World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987).

8. Pers. comm., Yukon government official, June 1992.

9. Government of Canada, Umbrella Final Agreement of the Yukon Indian Comprehensive Land Claims (March, 1990). For more details, see Stephan Fuller, "The Yukon Environment Act and the Future of Resource and Environmental Management in the Yukon", presented at a Canadian Bar Association Seminar, *Current Issues in Resource and Environmental Law*, September 19, 1992.

10. Pers. comm. See the *Canadian Environmental Assessment Act*, S.C. 1992, c.37.

11. *Her Majesty the Queen in right of Alberta, the Ministers of Transport and of Fisheries and Oceans* v. *Friends of the Oldman River Society and Interveners*, S.C.C. File # 21890 (January 23, 1992, unreported).

12. R.S.C. 1985, c.E-10.

13. SOR/84-467.

14. This right comes into being when the particular activity complained of is subjected to a regulation under the act, or on October 1, 1996 if no such regulation is promulgated (s.8(2)).

Recent Developments in Canadian Oil and Gas and Mining Law

*by Susan Blackman**

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Oil and Gas

Environmental Assessment — Legislation — Saskatchewan

Saskatchewan has amended *The Crown Minerals Act*, S.S. 1984-85-86, c.C-50.2. Bill 10, *The Crown Minerals Amendment Act*, 2nd sess., 22nd Leg., 1992 (assented to July 31, 1992) adds, among other things, a new section 10.1 which permits the Minister to cancel Crown dispositions for environmental reasons. The new section provides that no person has a right of action against the Crown or its agents because of the cancellation of the disposition and that compensation will be paid only in accordance with regulations.

Offshore Oil and Gas Development — Nova Scotia — Legislation

The *Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*, S.N.S. 1987, c.3, has been amended. In addition to corrections and housekeeping changes, the amendments affect applications for licences and other authorizations particularly with regard to safety requirements. They also establish the office of Chief Safety Officer, and address spills, pollution, and financial liability, as well as new offenses. *See, An Act to Implement Arrangements Made Between the Province and the Government of Canada to Provide Uniformity in the Laws Relating to Petroleum Resources in the Offshore*, S.N.S. 1992, c.12.

Royalties — Policy and Legislation — Alberta

The Alberta government has implemented changes in its policies on royalties with the intention of stimulating the oil and gas industry. Among these changes are the following: Royalties have been reduced effective January 1, 1993. Administration of the natural gas royalty has been simplified effective January 1, 1994. Simplification includes implementation of a reference price for valuing gas at the plant outlet at the time of production. Royalty structure has been modified by incorporating index formulas to adjust for future inflation. A permanent one year royalty holiday on third-tier oil exploratory wells has been implemented effective October 1, 1992. The royalty on experimental oil sands has been reduced to one percent.

Alberta has also amended its *Mines and Minerals Act*, R.S.A. 1980, c.M-15, with regard to the circumstances for recalculating royalties (*Mines and Minerals Amendment Act*, S.A. 1992, c.20).

Mining

Assistance to the Mining Industry — Manitoba

The Manitoba *Prospectors Assistance Program Regulation*, Man. Reg. 165/92, implements a program of financial assistance for prospecting projects up to an annual limit of 50% of the expenditures incurred or a maximum of $7,500.

British Columbia Dispute Procedure — Nature of Appeal to Court

In *McKenzie* v. *Mason*, [1992] B.C.J. No. 2046 (B.C.C.A.) (QL Systems) a decision of the Chief Gold Commissioner of BC is under appeal to the BC Supreme Court. The parties applied to the court for an order that the appeal would be a trial de novo. Subsequently, one party revoked its consent to the order. The BC Court of Appeal held that an appeal from a decision of the Gold Commissioner cannot be a trial de novo, even with consent of the parties. The Gold Commissioner's decision on a complaint filed pursuant to s.35(1) of the *Mineral Tenure Act*, S.B.C. 1988, c.5, is an administrative decision though it has judicial characteristics. The Legislature does not intend "to grant to appellants under s.35(10) of the *Mineral Tenure Act* a full-blown Supreme Court Trial on whether or not mineral claims have been properly located or the other matters the Chief Gold Commissioner is authorized to enquire into pursuant to s.35(1)(a) to (d) inclusive."

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Institute News

- Owen Saunders participated in a workshop on water issues in the middle east, convened in Ottawa, September 9-10, by the International Development Research Centre.

- Owen Saunders visited Russia from August 29 to September 6 as part of an initiative directed at assisting the Russian Federation in the management of its energy resources. Mr. Saunders was part of a small delegation of Canadian federal and provincial representatives who gave seminars on the Canadian experience in energy management to government officials in Moscow and Tyumen City (a regional capital and centre of the oil industry in western Siberia). The delegation also had discussions with government officials on possible policy areas where Canadian expertise might be of assistance to Russia. The visit was carried out as part of a government to government initiate funded by the federal Task Force on Central and Eastern Europe.

- Monique Ross presented a seminar on "Forest Management in Alberta" for The University of Calgary's Environmental Research Center Summer Seminar Series in July 1992.

1992 Essay Prize Awarded

The Institute recently awarded its annual $1,000 essay prize to Mr. Darcy M. Tkachuk for his paper entitled "Alberta's Wetlands: Legal Incentives and Obstacles to Their Preservation".

Mr. Tkachuk graduated from the University of Alberta in 1988 with a Bachelor of Arts in Political Science and in 1992 with a Bachelor of Laws. Mr. Tkachuk is an avid outdoorsperson with an interest in ensuring that our natural environment and its resources are managed properly so as to prevent unnecessary destruction of our habitat and ecology. Mr. Tkachuk is presently articling with the Edmonton law firm of Wheatley Sadownik.

Mr. Tkachuk's paper was one of thirteen essays submitted to a Selection Committee composed of Gordon Brown, Q.C., a lawyer with the firm Bennett Jones Verchere; Harold Lemieux of Shell Canada Limited; and Sheilah Martin, Acting Dean, The University of Calgary Faculty of Law.

Students wishing to submit an entry for the 1993 Essay Prize should contact their Dean of Law.

Recent Visitors

Neil McIlveen, Director
Energy Mines and Resources Canada, Analysis Division, Economic and Financial Analysis Branch

Nguyen Duc Lien, Interim Mekong Committee, Bangkok, Thailand

Lorne Kriwoken, University of Tasmania

Canadian Forest Management Project

Alberta Forestry, Lands and Wildlife, Milner Fenerty, McLennan Ross and Forestry Canada recently became sponsors of the Institute's Canadian Forest Management Project. The two-year research project will consider the extent and the means by which our political institutions and legal practices are responding to the increasingly complex and conflicting demands being placed on our forests. The principal researcher for the project will be Monique Ross.

The following is a complete list of project sponsors to date: Alberta Forestry, Lands and Wildlife; Milner Fenerty; McLennan Ross; Forestry Canada; the Alberta Law Foundation; the British Columbia Law Foundation; Alberta Forest Products Association; Fasken Campbell Godfrey; Lang Michener Lawrence & Shaw; and Blue Ridge Lumber (1981) Ltd. Additional sponsors will be announced in future issues of *Resources*.

Companies, firms, and foundations interested in obtaining information about sponsorship of this project may contact the Institute's Executive Director at (403) 220-3200 or write to: Canadian Institute of Resources Law, 430 BioSciences Building, The University of Calgary, Calgary, Alberta T2N 1N4. All donations are tax-deductible.

Upcoming Educational Activities

Contract Law Course

On February 4 and 5, 1993 the Institute will present a Contract Law Course at Calgary's Stampeder Inn. Aimed at non-lawyers who deal extensively with contracts, the course will be open to the public. Recently, the course has been offered to employees of Chevron Canada, Esso Resources Canada and Canadian Occidental Petroleum.

The course examines such issues as how a contract is formed and terminated, judicial approaches to the interpretation of contracts, and the calculation of damages. In addition, a number of clauses commonly found in petroleum industry contracts are scrutinized (including *force majeure*, independent contractor, choice of laws, liability and indemnity, and confidential information). The course does not focus upon specific types of contracts used in the industry but is geared for industry personnel at all levels whose jobs require them to understand the basics of contract law. Materials prepared for the course draw upon Canadian cases and problems involving the petroleum industry.

The course is conducted by Professor Nicholas Rafferty of The University of Calgary Faculty of Law and Institute Research Associate Susan Blackman. The course involves lectures by the instructors, but also utilizes individual and group problem-solving methods.

The registration fee is $395, including all materials. For more information or to register, please contact Patricia Albrecht at (403) 220-3974 or fax (403) 282-6182 as soon as possible since space is limited.

Conference

The Institute's Sixth Conference on Natural Resources Law, "Law and Process in Environmental Management", will be held in Ottawa on May 13 and 14, 1993. The conference is convened by the Canadian Institute of Resources Law and the Faculty of Law (Common Law Section) at the University of Ottawa.

The focus of the conference directs attention to important legal and institutional innovations in environmental management. These innovations are evident in areas such as environmental assessment, environmental litigation, international and Canadian interjurisdictional arrangements, access to decision-making, and aboriginal and northern processes. They have important implications for environmental policy-making, conflict resolution and resource management decision-making. The conference will bring together leading Canadian experts on process issues in environmental management.

Please see the enclosed preliminary conference brochure for further information.

Companies, firms, and foundations interested in obtaining information about sponsorship of the conference may contact the Institute's Executive Director at (403) 220-3200 or write to: Canadian Institute of Resources Law, 430 BioSciences Building, The University of Calgary, Calgary, Alberta T2N 1N4. All donations are tax-deductible.

Back Issues of Resources

The following back issues of *Resources* are available free of charge: 14, 26, 27, 29, 30, Index (1-30), 32, 33, 34, 35, 36, 37, 38 and 39. If you need any of these back issues, please contact the Institute at the address or telephone number below:

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New Publications

Growing Demands on a Shrinking Heritage: Managing Resource Use Conflicts, Essays from the Fifth Institute Conference on Natural Resources Law, edited by Monique Ross and J. Owen Saunders, 1992 431 pages. ISBN 0-919269-35-4 $80.00 Hardcover

Conflict has always been an underlying theme in the management of natural resources, whether between specific uses of the resource (for example, forestry versus fisheries) or, as has been more recently the case, between philosophies of resource management. But while such conflicts are not new, recent disputes have arguably taken on a significantly different character than past ones.

The goal of this volume of essays is to provide a greater understanding of the nature of resource-use rights and resource-use conflicts, with special emphasis on existing legal, economic and institutional barriers to their resolution, and to explore ways in which conflicts have been or might best be addressed, in both the Canadian and international context. To this end, the volume brings together legal and non-legal voids in order to provide cross-disciplinary and cross-sectoral perspectives on problems and solutions associated with conflicting resource uses.

Special thanks to Sue Parsons of the Institute for her assistance with the layout and design of this issue of *Resources*.

Energy Conservation Legislation for Building Design and Construction, by Adrian J. Bradbrook. 1992 88 pages. ISBN 0-919269-38-9 $20.00

This book reflects research carried out by Professor Bradbrook in the course of his tenure as the 1991 incumbent of the Chair of Natural Resources Law in the Faculty of Law at The University of Calgary. During this time his research was concentrated on the question of energy conservation. This volume represents part of the output of that research and addresses the legal problems that surround energy conservation, both with respect to new and existing buildings, and with respect to rental buildings. It includes not only a review of existing legislation, but also recommendations for possible legislative changes.

How to Order

To order publications please send a cheque payable to *The University of Calgary*. Orders from outside Canada please add $2.00 per book. Orders within Canada please add 7% GST. Please send orders to:

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